

The requested new claims do not change the scope of the claimed invention as defined in the already allowed claims. Allowed claim 38 refers to "adenovirus DNA which has sustained a deletion beginning at nucleotide 357 and ending at nucleotide 4020-4050." The beginning of the deletion (nucleotide 357) is the cleavage site of the restriction enzyme, *SacII*, that was used to construct the adenoviral vectors described in the application. However, the two nucleotides of the insert DNA that immediately follow this cleavage site happen to be the same as those at positions 358 and 359 of wild-type Ad5 DNA (GG). To facilitate identification of an adenovirus expression vector within the scope of Applicants invention in such situations where the initial nucleotides of an insert DNA happen to be the same as in wild-type Ad5 DNA, new claim 50 specifies that the "adenovirus polynucleotide sequences beginning at nucleotide 360 and ending at nucleotide 4020 to 4050 are replaced with a non-adenoviral polynucleotide sequence." This new claim thus is of the same scope as allowed claim 38.

New claim 50 finds support in the specification at, for example, page 33 lines 14-22 ("These new constructs replace the E1 region (bp 360-3325) of Ad5 with p53 driven by either the Ad2 MLP (A/M/53) or the human CMV promoter (A/C/53), both followed by the tripartite leader CDNA (see Figure 4). . . . Additional MLP and CMV driven p53 recombinants (A/M/N/53, A/C/N/53) were generated which had a further 705 nucleotide deletion of Ad 5 sequence to remove the protein IX (PIX) coding region."); (3325+705=4030)) and page 15 lines 10-13 ("As used herein, the term "foreign gene" is intended to mean a DNA molecule not present in the exact orientation and position as the counterpart DNA molecule found in wild-type adenovirus").

New claim 51, which depends from claim 50, is directed to the adenoviral vector A/C/N/53. Claim 51 is of the same scope as allowed claim 48, which is also directed to A/C/N/53 but depends from allowed claim 38. New claim 51 finds support in the specification as described above for claim 50 and in allowed claim 48. Similarly, new claims 52-57 correspond exactly to allowed claims 42-47.

Finally, new claim 58 is an independent claim that is directed to the adenoviral vector A/C/N/53. This vector is the subject of allowed claim 48, which depends from claim 38.

However, Applicants wish to have this particular vector covered by an independent claim and so request entry of new claim 58.

The proposed new claims are patentable to Applicants, as each claim is of the same scope as a previously allowed claim. For this reason, no additional search or examination is required. The requested amendments to the specification and the proposed new claims were not presented earlier because the need for the amendments was not recognized until the final review of the application prior to issuance was undertaken.

CONCLUSION

If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned attorney at (415) 576-0200.

Respectfully submitted,



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